IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9575 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANSA NAGAR PANCHAYAT

Versus

MUNI. & PANCHAYAT EMPLOYEES UNION

Appearance:

MR D.M.Thakkar for Mr. PM THAKKAR for Petitioner

MRS DT SHAH for Respondent No. 1

MR NR SHAHANI for Respondent No. 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 29/02/2000

ORAL JUDGEMENT

This petition has been filed for quashing the award dated 15.3.1994 of the Presiding Officer, Labour Court, Kalol in Reference (LC) No.13 of 1990 at Annexure "A" to the petition.

2. The respondent Union raised an industrial dispute in respect of daily wager Naka Karkoons, Pump operator, tax clerk, seeking their regularisation from the date of completion of 240 days service with all consequential benefits including the benefit of Desai Pay Commission, festival holidays, cash allowances and all other benefits admissible to regular employees. During the pendency of the Reference, five workmen out of 13 had abandoned their demand and the Reference was treated as dismissed in respect of those five workmen and the present Reference proceeded in respect of eight workmen only. The Labour Court has allowed the Reference in respect of eight workmen and directed the petitioner Nagarpalika to regulrise the said workmen in their respective posts of Octroi clerks, tax clerks and pump operators from the date of completion of 240 days service. The Labour Court also directed to grant all consequential benefits to the said workmen including the benefit of Desai Pay Commission, festival holidays, cash allowance and all other benefits admissible to regular employees. The Labour Court has further directed to pay monetary benefits of difference in salary etc. from July, 1989.

3 . Affidavit-in-reply has been filed by the respondent no.1 Union. Heard the learned advocates for the parties and perused the relevant papers on record. It is contended by the learned advocate for the petitioner that the Labour Court has acted upon on concept of 240 days in regularising the services of the concerned workmen, irrespective of the fact that the work is of permanent nature or not, the persons are qualified or not or the services of the workmen were long or short one, whether he was eligible and qualified for the post at the relevant time or not and the service was satisfactory or not. This concept has not been recognised by any rule of law. This is only based on concept of 240 days service. The Labour Court has allowed the claim of the respondent which is illegal and not sustainable in the eye of law. Hence, this petition has been preferred against the award passed by the Labour Court, Kalol. According to the learned advocate for the petitioner, the concept of 240 days that as soon as the workman completes 240 days, he will be deemed to be a permanent workman is misconceived. Though the workmen were being paid equal pay for equal work and the workmen were employed on daily rated basis, it is a back-door entry of the employees. No recruitment process was made for their appointment. As such, the Labour Court has committed an error on the face of the record in regularising the services of the workmen on the basis of

240 days service. The Labour Court had agreed on the point that 20 persons were working as against 13 sanctioned post. The sanction of the additional 13 posts was asked. The learned counsel for the petitioner relied on the cases of Satyanarayan Sharma and others vs. National Mineral Development Corporation Ltd. and others reported in AIR 1990, SC, 2054 and on the judgment in the case of State of Haryanaa vs. Piara Singh reported in AIR 1992, SC,2130.

4. On the other hand, the learned counsel for the respondents contended that the post of workman is transferrable. The work of the workmen is of permanent nature. All the workmen are well qualified as required under the rules and they are working since long. It is also submitted that a Reference was made by 13 persons, out of whom 5 withdrew their demand on the assurance of the Nagarpalika. As soon as they withdrew their demand, the Reference proceeded only with regard to 8 persons and they were given permanent status by the petitioner Nagarpalika. It is further pointed out that there were four permanent vacancies and four persons, namely (1) Manilal Kachrabhai Parmar (2) Baluji Kachraji Thakore (3) Ghabhaji Chelaji Thakore and (4) Bhamarsinh Balusinh Chavda were given promotion on the post of octroi clerk by the order dated 12.4.90. It is also pointed out that four persons namely, (1) Mukundsinh Surajmalsinh Raol (2) Baldevji Pashaji Thakore (3) Narendrasinh Pruthvisinh Raol and (4) Ratilal Ambalal Joshi were appointed on four posts of octroi peon and they were promoted to the post of octroi clerk by an order dated 29th May, 1991. Thus, there were clear vacancies of eight persons and peons who were promoted to the post of octrok clerk on permanent posts. This is a state of affairs of the petitioner Nagarpalika and the respondents who are daily rated workmen have not been given permanent status or their services have not been regularised. The learned counsel for the respondents also relied on certain case laws of this court as well as those of the Apex Court and submitted that the Labour Court has not committed any error in passing the award in favour of the workmen. It is further submitted that this is a petition under Articles 226 and 227 of the Constitution of India wherein this Court has a very limited scope to interfere with the award of the Labour Court. Therefore, according to him, the petition is liable to be dismissed.

5. I have carefully considered the contentions raised on behalf of the rival parties. The Labour Court has elaborately discussed on the aspect that the workmen were working on the posts of octroi clerk and

that work was of a permanent nature. It is admitted by one of the witnesses of the Nagarpalika that 13 posts have already been sanctioned and the Nagarpalika has also sent a proposal to the Government for sanction of additional 13 persons. However, they have not received the sanction letter from the Government. It appears that the Nagarpalika is considering that it is a work of permanent nature for which 13 workmen are required to be regularised on permanent basis. It is also admitted that certain workmen are transferred from one department to another. As such, this post is also transferrable. It is also stated that these eight workmen are well qualified as the requirement of Octrok clerk for Nagarpalika is 7th standard pass though all the eight persons are SSC passed. It is state that the workmen were working since long though they have been given benefits from the month of July, 1989. From the assertion made in the affidavit-in-reply, it appears that Dashrathbhai Gopaldas Kadia and Amratbhai Mathurdas Patel were appointed in the year 1988 and benefits have been awarded from the month of July, 1989. As such, it cannot be said that these two persons were working since long.

6. So far as the concept of 240 days' service is concerned, I am totally in agreement with the learned advocate for the petitioner that there cannot be a rule of law that should be accepted blindly. There may be other factors which are required to be taken into consideration. Merely completion of 240 days is not sufficient to regularise the services of any part-time employee or daily rated workmen. In the present case, the tenure of service, educational qualifications, satisfactory performance and nature of work etc. are also required to be considered for that purpose. It is possible that for a particular purpose, certain persons are appointed after that purpose is over,then persons appointed cannot claim work of permanent nature.

7. I have carefully considered the entire facts and circumstances of the case. In my opinion, the judgment of the Labour Court does not call for any interference by this Court in exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India, except on the point of the benefits awarded from July, 1989. There is no justifiable ground to give the benefits from July, 1989 and the benefits should have been given from the date of the Judgment i.e. 15.3.1994. This Court, at the admission stage, had considered this aspect and observed that the Nagarpalika has approached the Government for sanction of those posts for the first time in 1991 and it

is for the Nagarpalika to take necessary steps in that regard and that the services of the workmen concerned will not be terminated until the present petition is finally heard and disposed of and the benefits were given from the date of the award. It is observed that the award shall be implemented with respect to parity in service benefits forthwith from 15th March, 1994 onwards.

8. Therefore, in view of the above discussion, the petition deserves to be allowed in part with some modification. Accordingly, this petition is allowed in part and the award dated 15.3.94 passed by the Presiding Officer, Labour Court, Kalol is hereby confirmed with the modification. However, it is made clear that the concerned workmen will be treated to be in continuous service from the respective dates of their appointments for the purpose of pension, gratuity and all other retiral benefits. The award of the Labour Court is modified to the extent that the concerned workmen will be treated as permanent workmen from the date of the award i.e. 15.3.1994 and not from July, 1989 as ordered by the Labour Court and they will be entitled for the benefit of Desai Pay Commission from the date of the award. Rule is made absolute to the aforesaid extent.

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